S.B. CRIMINAL MISC. IInd BAIL APPLICATION NO.2210/2006
(Kailash @ Bhutta Vs. State)

Date of order : 5.7.2006

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Mahipal Bishnoi, for the applicant.
Mr. L.R. Upadhyay, Public Prosecutor.

I have heard learned counsel for the applicant as well as learned Public Prosecutor for the State and carefully perused the challan papers.

It is contended by the learned counsel for the applicant that first bail application was rejected by this Court vide order dated 1.3.2006. Thereafter challn was filed on 13.3.2006. While submitting the challan papers, it is contended by the learned counsel for the applicant that no recovery whatsoever has been made from the applicant. He has invited the attention of this Court towards FIR as well as the statement of witnesses namely Govardhan Lal Nayak, ASI, Brijesh Singh, Constable, Mohan Singh and Sunil Agarwal – motbirs and Santosh Kumar and prayed that as per their statements in the vehicle from which the poppy husk was recovered, only one person was sitting, who was driver and nonelse, therefore, no recovery has been made from the applicant. Further, it is contended that he has been falsely implicated in this case and challan has already been filed, therefore, the

applicant may be enlarged on bail. It is contended by the learned counsel for the applicant that the applicant has been indulged in this case only on the basis of statement of co-accused, therefore, he is entitled to be released on bail.

Learned Public Prosecutor vehemently opposed the bail and contended that as per the statement of Bhagirath Singh Rajput, the vehicle No. RJ-19-TA-0242 was purchased by accused Bhawani Singh from one Khet Singh S/o Khinv Singh, resident of Village Suthala, Jodhpur. Gajendra Singh, the driver of the said vehicle stated before him to Bhawani Singh that the said vehicle was hired by applicant Kailash @ Bhutta and his friend Govind Nayak at the rate of rupees five kilometer and thereafter, they went to Nimach where while leaving the driver in a hotel, they went at unknown place and came back after two hours and asked him to go back to Jodhpur. It is also stated by witnesses Bhagirath Singh Rajput and Khet Singh Rajput that when they reached near the boarder of Rajasthan State, applicant Kailash and Govind informed that poppy husk is lying in the vehicle and they purchased the same, therefore, for the first time, it came to the knowledge of Gajendra Singh that in the vehicle, the present applicant Kailash and Govind were transporting 234 kg poppy husk and near the boarder of Rajasthan State upon the Chittorgarh road, the Rajasthan Police chased the vehicle and at that time,

while leaving the said vehicle upon the road, they ran away from the place of occurrence. This information was given by driver Gajendra Singh to witnesses Bhagirath Singh Rajput and Khet Singh Rajput. Thus, it cannot be said that the applicant has been falsely implicated in this case. It is also contended by learned Public Prosecutor that according to the provisions of Section 37 of N.D.P.S. Act, the quantity of recovered contraband article is more than commercial quantity, therefore also, the applicant is not entitled to be released on bail at this stage.

Looking to the facts and circumstances of the case, I am not inclined to grant bail to the accused-applicant. Accordingly, the bail application stands rejected. However, the applicant is at liberty to move fresh bail application after recording the statement of Bhagirath Singh Rajput and Khet Singh Rajput. It is expected from the trial court that the statement of aforesaid witnesses are recorded first.

(GOPAL KRISHAN VYAS), J.

arun